Can. P.
Cate No 925

IMMEDIATE

THE CANADA LIFE
ASSURANCE COMPANY
BILL

IS STATED TO BE LISTED TO BE HEARD BY THE BANKING AND COMMERCE COMMITTEE, ON WEDNESDAY THE 10th DAY OF MARCH, 1909.

A RESPECTFUL APPEAL

TO

THE RIGHT HONORABLE SIR WILFRID LAURIER
PRIME MINISTER

THE HONORABLE WILLIAM S. FIELDING
MINISTER OF FINANCE

THE HONORABLE A. B. AYLESWORTH, K.C.
MINISTER OF JUSTICE

TO STAY ALL FURTHER PROCEEDINGS IN THIS BILL ON THE GROUNDS STATED HEREIN.

DATED AT TORONTO,
THIS 8th DAY OF MARCH, 1909

WM. LAIDLAW,
Solicitor

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The Canada Life
Assurance Company

(1) A STATEMENT OF THE CASE FOR OPINION

(2) The opinion of Sir Robert B. Finlay of "The Temple," London, England.

(3) Extracts from the report of the Royal Commissioners on insurance.

(4) The claim that the Policyholders are entitled to the right of trial of all questions of law and fact on their merits by the legal tribunals of the country.

A RESPECTFUL APPEAL
TO THE MINISTERS OF THE CROWN

to stay all proceedings on this Bill on the grounds:

(1) That no proper notice has been published of intention to apply for this Bill;

(2) That a notice of "defining the provisions as to division of profits" is not a proper notice to policyholders of intention to destroy their lawful contract rights under their Life Policies;

(3) That this is not the case of a public franchise subject to the control of Parliament;

(4) That this is a case of thousands upon thousands of private contracts, involving millions upon millions of dollars applied for—paid for—issued and received upon the faith of an act of the Parliament of Canada, enacted on the application of the Company—word for word—as it was presented to Parliament;

(5) That this Bill would destroy all these contracts—which are called policies with profits;

(6) That I am not aware of any case, and respectfully submit there never should be a case under the jurisdiction of the Parliament of Canada in which the lawful rights under a private or corporate contract have been destroyed, and the lawful obligations under the contract released and discharged by an act of Parliament;

(7) And on other grounds herein stated.

Dated at Toronto this 8th day of March, 1909.

WM. LAIDLAW, Solicitor.

Canada Life Assurance Company

STATEMENT OF CASE FOR OPINION OF COUNSEL

The Company was founded by **a Deed of Settlement** on **1st January, 1848**, which provided for the constitution and management of the affairs of the Company.

This Deed conferred on the Directors power to apply for an Act of Incorporation, and to alter or amend the constitution of the Company.

The Directors did apply for an Act, and **the Company was incorporated by Act 12 Vic. (1849) cap. 168,** with a capital of **£50,000**, with power to increase the capital to £250,000.

The powers conferred on the Company were the usual powers of a life insurance company to make contracts, etc.

The 31st clause of the Act enacts that this Act shall supersede the Deed of Settlement and it will therefore not be necessary to examine the provisions of the Deed of Settlement.

An important question has arisen in regard to the distribution of the profits of the Company between the shareholders and the policyholders on the participation scale, and the opinion of Counsel is required upon this question.

The rights and obligations of the shareholders and the participating policyholders depend upon the construction of the Act and the amendments to the Act.

The original Act—clause 18—enacts that the Directors shall have the management and superintendence of the affairs of the Company, and they may lawfully exercise all the powers of the Company; and, amongst others, they may allot and divide among the assurers on the participation scale so much of the profits realized

from that branch, and at such time as they may see fit; and may also declare and cause to be paid or distributed to the respective stockholders any dividend or dividends of profits in proportion to the shares held by them at such times and seasons as they shall think proper, or add the same to the paid up portion of the capital stock, etc.; but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this Act in that behalf.

Clause 34: This Act shall be a public Act and shall be judicially taken notice of as such.

This Act of Incorporation was amended by an Act 42 Vic. (1879) cap. 71, called "An Act to amend the Act Incorporating The Canada Life Assurance Company."

The preamble recites:—"Whereas The Canada Life "Assurance Company by their petition represented that "in carrying on their business heretofore the Directors "have allotted and divided among the persons assured "upon the participation scale seventy-five per cent. of "all the profits realized from the entire business of the "Company, and that in view of the increasing business "of the Company it is or may be desirable to vary the "relative proportions in which such profits should be "allotted and divided as between the shareholders and "such persons assured, and have prayed for an amend-"ment to the Act of Incorporation as to the mode of "allotment and division of profits, and for other pur-"poses."

Clause 1 enacts: "The Directors of the Company "instead of continuing to allot the profits realized in "the business of the Company as heretofore in the "proportions in the preamble mentioned, are hereby "authorized in their discretion to make such new allot-"ment and division of such profits among the persons "assured upon the participation scale and the share-"holders of the Company at such times and in such

"manner as they may think fit; and also from time to time "to alter or vary the relative proportions in which such "profits shall be allotted and divided as between such "assured and the shareholders."

"Provided always that the proportion of such "profits allotted to such assured shall not be less than "ninety per cent. thereof and the proportion to the "shareholders shall not exceed ten per cent. thereof."

These Acts were further amended by "An Act re- "specting Canada Life Assurance Company," 62-63 "Vic. (1899) cap.99.

This amendment relates to the election of fifteen directors; nine by the shareholders and six by the policy-holders; but is loaded with so many conditions that it has not been of any value to the policyholders.

Clause 13 enacts: "The shareholders and the "Directors elected by them shall have the exclusive "control of the question of the proportion of profits not "exceeding ten per cent. thereof to be allotted to the "shareholders, and of the mode of dealing with such "proportion, and all other matters relating to the "capital stock of the Company."

The question for the opinion of Counsel arises upon these extracts from the original Act and the amended Acts, and the proper construction to be given to the said proviso. It limits the proportion of such profits to be allotted to the assured to ninety per cent., and the proportion of such profits to the shareholders to be not more than ten per cent.

It is therefore not necessary for the purposes of the opinion to refer to any payment of dividends or allotment of profits before the passing of the Act of 1879. The Company is bound by the recital in the preamble to the Act of 1879, and clause 1 of the Act, inclusive of the said proviso.

I think it desirable, however, to give some illustrations of the Acts of the Company leading up to the

increase of the capital to $1,000,000.00, and of the payment of an annual dividend at the rate of eight per cent. per annum on this capital without regard to the said proviso.

At the time the Act was passed—

The paid up capital was, - -		$125,000
Made up in cash - -	$63,573.50	
And in dividends added to shares -	61,426.50	
		$125,000

The business of the Company was carried on on this capital until the year 1900, and I might at this point refer to Clause 7 of the original Act which provides that "no one stockholder shall either in person "or by proxy cast more than forty votes, and every "question shall be decided by the majority of votes "present at such meeting," and to Clause 3 of the Act of 1879 which enacts that "the proviso to the seventh section of the Act is hereby repealed."

I make these references because The Honorable George A. Cox, the President of the Company, has been acquiring shares from time to time, and he now owns or controls **fifty-seven** per cent. of the capital stock.

The present capital stock is - -		$1,000,000
The President owns or controls	$570,000	
Other six Directors hold -	151,200	
amounting to - - -	$721,200	
Out of the full paid up capital of -		$1,000,000

The said general Insurance Act of Canada passed in the year 1889 provided for a standard rate of interest for the computation of the reserve fund as follows:

(1) On policies issued on and after 1st Jan., 1900, at - - - - -	3½ per cent.
(2) On policies issued before that date until Jan., 1910 - - -	4½ per cent.
(3) On policies issued after Jan., 1910, until Jan., 1915 - - -	4 per cent.
(4) On policies issued after Jan., 1915	3½ per cent.

These legislative provisions did give a protection to the policyholders on the participation scale, but they have been disregarded by the Company, and the Directors have ordered computations for the reserve fund to be made on the following basis:

(1) On policies issued on and after 1st Jan., 1900 - - - - 3 per cent.

(2) On policies issued before that date 3½ per cent.

This anticipated calculation, covering a period of fifteen years in advance, has taken the accumulated profits of the Company away from the participating policyholders for the nominal purpose of strengthening the reserves, and has therefore provided a complete protection to the shareholders against risk of loss.

The amount may be estimated from $2,500,000 to $3,000,000.

I do not for the purpose of this opinion raise a question whether the change of the computation from the Government standard hereinbefore mentioned was a bona fide exercise of the powers of the Directors. The proper legal construction of the original Act and amended Acts (inclusive of the said proviso for the distribution of profits) is the sole question for consideration.

It is manifest that the change of the rate of interest for the computation of the reserve, and the payment of the balance of capital, are interwoven one with the other, but the question is at present limited to the rights and obligations between the shareholders and the policyholders under the proviso for distribution of profits.

A Royal Commission was appointed for the purpose of a report upon the Life Insurance Companies, and the Commissioners by their report to Parliament referred to the payment of the balance of capital as follows: **"That the payment of balance of capital, $875,000, "and its engagement in the concerns of the Company "without any real need, is a simple method of raising**

"the earning power to eight per cent., the difference, "under whatever name, being unnecessarily taken "away from the policyholders whose accumulations "have earned it."

The surplus on policyholders' account in the year 1905 is reported at - - - $1,393,403
and the capital stock paid up amounts to 1,000,000
making a surplus on policyholders' account of - - - - - $2,393,403

The stability of the Company is therefore established beyond question, and I only refer to these matters for the purpose of illustration, and by way of indication of the motives of the shareholders in changing the rate of interest for the computation of the reserve and increase of the capital.

The standard rate of interest earned by the Company may be approximated at a little more than four per cent. per annum, and the payment of an annual dividend on $1,000,000 at the rate of eight per cent. per annum has been unlawful—and will be unlawful in the future—if the profits of the Company are by law divisible between the policyholders on the participation scale and the shareholders, in the proportion of ninety per cent. to the policyholders and ten per cent. to the shareholders.

I will give some illustrations of the comparative rights of the shareholders and the participating policyholders by a distribution under the proviso of 90 per cent. of "all the profits realized from the entire business "of the Company" to the policyholders, and 10 per cent. to the stockholders.

The total distribution of profits in money to the shareholders from the year 1879 (the date of the proviso) to the year 1906, hereinbefore stated, has amounted to - - - - - - $1,275,625

An account for distribution of profits under the proviso from the year 1879 to the year 1906 would therefore need to be :

For profits for distribution - -		$12,756,250
To policyholders, 90%	$11,480,625	
To shareholders, 10%	1,275,625	
		$12,756,250

No such large sum could have been realized from the profits of the Company from 1879 to 1906, and the shareholders have received a much larger percentage than 10 per cent.

The annual profits now paid to the shareholders are - - - - - -	$80,000

and an account for distribution under the proviso would therefore need to be:

For profits for distribution - - -		$800,000
To policyholders, 90 per cent.	$720,000	
To shareholders, 10 per cent.	80,000	
		$800,000

No such large annual sum can be realized from the annual profits of the Company, and the shareholders are receiving a much larger percentage than 10 per cent.

Dated 12th February, 1908.

Supplementary Statement of Case for Opinion

in addition to the Case dated 12th Feb., 1908

The Case dated 12th February submitted for opinion the question of the rights and obligations between the shareholders and the participating policyholders under the amendment to the original Act 42 Vic. (1879) cap. 71, called "An Act to amend the Ac incorporating The Canada Life Assurance Company," and it has since been deemed advisable to submit a specific question in regard to the lawful allotment and distribution of profits after the shareholders paid in the additional sum of $875,000, and increased the capital to $1,000,000.

The following illustration is taken from the verified returns of the Company to the Government for six years including a quinquennial year:

1901	Cash dividends paid to policyholders -	$26,987
	Cash dividends applied in payment of premiums - - -	45,809
	Cash dividends to stockholders -	41,118
1902	Cash dividends paid to policyholders -	22,002
	Cash dividends applied in payment of premiums - - -	43,691
	Cash dividends to stockholders -	76,722
1903	Cash dividends paid to policyholders -	25,756
	Cash dividends applied in payment of premiums - - -	40,058
	Cash dividends to stockholders -	78,502
1904	Cash dividends paid to policyholders -	31,292
	Cash dividends applied in payment of premiums - - -	36,925
	Cash dividends to stockholders -	79,819
1905	Cash dividends paid to policyholders -	349,719
	Cash applied to purchase reversionary bonus - - - -	466,294
1905	Cash applied to meet anticipated bonuses for last quinquennium on minimum policies - - - -	338,327
	Cash dividends applied in payment of premiums - - -	40,348
	Cash paid to stockholders - -	80,000
1906	Cash dividends to policyholders -	36,801
	Cash dividends applied in payment of premiums - - -	52,333
	Cash paid to stockholders - -	80,000
	Amounting in all to - -	$1,992,503

The profits allotted for these years being - - - - $1,992,503

should under the proviso be divisible as follows :

To shareholders, 10 per cent.	$ 199,250	
To policyholders, 90 per cent.	1,793,252	
		$1,992,503

The dividends paid to shareholders during these years have been :

1901 - - -	$41,118
1902 - - - -	76,722
1903 - - -	78,502
1904 - - - -	79,819
1905 - - -	80,000
1906 - - - -	80,000
Amounting to - -	$436,161

There is one large item of $338,327, in the year 1905, which does not seem to be profit, but this is not important for the present question.

There is no doubt that the Directors intend to pay to the shareholders $80,000 per annum for the future, being a dividend at the rate of eight per cent. per annum on $1,000,000, and to disregard the proviso.

The profits for such allotment under the proviso would, of course, have to be - - $800,000

10 per cent. to shareholders -	**$80,000**	
90 per cent. to policyholders -	**$720,000**	
		$800,000

The Report of the Royal Commissioners comments on the increase of capital as follows :

"With the standing and reputation which the "Company undoubtedly possessed in 1900, it is "difficult to arrive at any sound economic reason "from the standpoint of the policyholders for "calling up the $875,000 capital. It is manifest "that if the inherent earning power of the "additional capital is only 4.67 per cent. its "engagement in the concern of The Canada Life "without any real need, is the simple method of

"raising that earning power to eight per cent.— "the difference, under whatever name, being "unnecessarily taken away from the policyholders "whose accumulations have earned it."

The President made an explanation in the Senate and quoted this passage—and then proceeded as follows:

"This statement is inaccurate, entirely misleading "and inconsistent with the actual facts of the case, "which are as follows: In the early history of the "Company the Act of Incorporation provided that "the profits derived from the business should be "divided in the proportion of twenty-five per cent. "to the shareholders and seventy-five per cent. to "the policyholders. It remained in that way until "the year 1879, when the shareholders made "application for legislation providing that not "more than ten per cent. of the profits should "be allotted to the shareholders and not less than "ninety per-cent. to the policyholders. The ten "per cent. to which the shareholders are still "entitled is not increased, decreased or in any way "affected by the amount of paid up capital, "whether it be $125,000, as it was, or $1,000,000 "as it now is. In either case the shareholders are "entitled to one-tenth of the profits. A share-"holders' account has been kept, to which has "been credited not only the average rate of interest "earned for the year on the capital, but also one-"tenth of the profits distributed, and it is out of "this account that the dividend of eight per cent. "has been paid. How then can it be said that "anything has been taken away from the policy-"holders?"

The Solicitor for the Company also made an explanation in the following words:

"The Company from its earliest days in ascertain-"ing profits for allotment first deducted the out-

"goings and expenses and interest on the paid up "capital at the average rate which the Company's "investments had yielded, and down to the Act "42 Vic., Cap. 72, allotted such profits in the pro- "portion of seventy-five per cent. to policyholders "on the participation scale and twenty-five per "cent to shareholders."

"That Act authorized and required the allotment "of such profits thereafter to be not less than "ninety per cent. to policyholders, on the par- "ticipation scale, and not more than ten per cent. "to the shareholders, and from the passage of that "Act to the present time the same course has been "pursued as to the mode of ascertaining profits for "allotment, and as interest on paid up capital is "allowed at the rate it and other moneys have "earned, it makes no difference i the profits for "allotment whether the paid up capital be $125,000 "or $1,000,000, as the amount available for "same to the allotment will be the same."

The Directors had power under the 18th section of the original Act, "to allot and divide among the "assurers, on the participation scale, so much of the "profits realized **from that branch** and at such times as "they may think fit—and may also declare and cause "to be paid, or distributed, to the respective stock- "holders any dividend or dividends of profits in "proportion to the shares held by them at such times "and seasons as they shall think proper, or add the "same to the paid up portion of the capital stock."

If these powers are superseded by the proviso in the Act of 1879, the Directors must deal with all the profits realized from the entire business of the Company whenever they allot profits. All the profits belong to the Company, and are trust moneys under the control of the Directors, for distribution.

It will be observed that the President says that he takes the average rate of interest on $1,000,000, and he sets that apart for the benefit of the shareholders, and does not bring it into the account of "the profits realized from the entire business of the Company." **He treats it as the private money of the shareholders and places it to their credit, and then he estimates that an additional ten per cent. of the profits would make up $80,000 a year.**

It would seem to be just as reasonable for the President to set apart for the benefit of the policyholders the average rate of interest on their invested accumulations and not bring it into the account of profits realized "from the entire business of the Company."

The practical question is whether the shareholders are a privileged class under the Act and amendments, entitled to double dividends—firstly: interest on the capital invested; and secondly: ten per cent. of the profits of the Company.

There does not appear to be any lawful ground for such a claim.

The question is, of course, involved in the case already submitted, but I wish the opinion to show that Counsel has considered the contention of the President.

QUESTIONS FOR OPINION

—

1. Whether the policyholders on the participation scale have been since 1879, and are now, entitled to at least ninety per cent. of all the profits realized from the entire business of the Company, and

2. Whether the payments of dividends to the shareholders since 1879 in excess of ten per cent. of the profits from the business of the Company, running from fifteen per cent. to seventy per cent. on capital, are **ultra vires** payments.

3. Is there any lawful ground for the contention of the President that the shareholders are entitled to interest on capital at the average rate of interest earned by the Company on its investments, and also to ten per cent. of the profits of the business of the Company—or, at least, to a sufficient part thereof to make up the sum of $80,000 a year to be paid to the shareholders as dividends;

Or is it the duty of the Directors to make up the accounts of "all the profits realized from the entire business of the Company," (inclusive of the interest which may arise from the investment of the money paid in on account of capital stock of the Company), and to limit the dividends to shareholders to ten per cent. thereof?

I would have understood the opinion on the question in the former case to include an opinion on these questions, because interest on capital could not be earmarked and separated, and excluded from accounts of profits; but I now request a specific opinion on the contention of the President. He does not even pretend that the investments of capital were separate investments, although that would make no difference. He speaks of the average rate of interest on the investments, which, of course, means on all the investments of the Company.

The construction of the Act of 1879 covers the whole case, but I desire a specific opinion on this extraordinary device of the President to pay to himself eight per cent. per annum on an investment of about $600,000 of capital in defiance of the proviso.

Dated 12th March, 1908.

OPINION OF SIR ROBERT B. FINLAY

There have been laid before me two cases for opinion with reference to The Canada Life Assurance Company, the first dated 12th February, 1908, with

covering instructions, and the second dated 12th March, 1908, together with the Statutes relating to the Company; namely, the Act of Incorporation of 25th April, 1849, and the amending Acts of 15th May, 1879; 1st April, 1893; and 10th July, 1899; and further, the Report of the Royal Commission on Life Assurance, 1907 Sessional Paper No. 123-A., and a newspaper report of a speech by the President of the Company in the Senate with reference thereto.

I am asked to advise on the following questions:

1. Whether the policyholders on the participation scale have been since 1879, and are now, entitled to at least ninety per cent. of all profits realized from the entire business of the Company.

2. Whether the payments of dividends to the shareholders since 1879, in excess of ten per cent. of the profits from the business of the Company, are **ultra vires** payments.

3. Is there any lawful ground for the contention of the President that the shareholders are entitled to interest on capital at the average rate of interest earned by the Company on its investments, and also to ten per cent. of the profits of the business of the Company—or at least to a sufficient part thereof to make up the sum of $80,000 a year to be paid to the shareholders as dividends; or is it the duty of the Directors to make up the accounts of "all the profits realized from the entire business of the Company" (inclusive of the interest which may arise from the investment of the money paid in on account of capital stock of the Company) and to limit the dividends to shareholders to ten per cent. thereof.

Under section 18 of the Act of 1849, the Directors had power to divide among the assurers upon the participation scale so much of the profits realized from

that branch, and at such times as they might think fit, and also to declare and cause to be paid or distributed to the stockholders any dividends of profits in proporti to the shares held by them, or to add the same to the paid up portion of the capital stock.

The powers of the Directors in these respects were materially modified by the amending Act of 1879. The preamble to that Act recites that the Company had by petition represented that the Directors had theretofore allotted and divided among the persons assured on the participation scale seventy-five per cent. of all the profits realized from the entire business of the Company, and that in view of the increasing business of the Company it was or might be desirable to vary the relative proportions in which such proportions should be allotted and divided as between the shareholders and such persons assured, and had prayed for an amendment to their Act of Incorporation as to the mode of allotment and division of profits, and for other purposes, and that it was expedient to grant the prayer of the said petition.

After this preamble the Statute of 1879 by its first section provided as follows: "The Directors of the "said Company instead of continuing to allot the "profits realized in the business of the Company as "heretofore in the proportion in the preamble mentioned, "are hereby authorized in their discretion to make such "new allotment and division of such profits among the "persons assured on the participation scale and the "shareholders of the Company at such times and in "such manner as they may think fit; and also from "time to time to alter or vary the relative proportions in "which such profits shall be allotted and divided as "between such assured and the shareholders: Provided "always that the proportion of such profits allotted to "such assured shall not be less than ninety per cent.

"thereof and the proportion to the shareholders shall "not exceed ten per cent. thereof."

The Act of 1899 provided for the election of nine Directors by the stockholders and six Directors by the policyholders, and the 13th section of that Act is in the following terms:

"The shareholders and the Directors elected by "them shall have the exclusive control of the question "of the proportion of profits (not exceeding ten per "cent. thereof) to be allotted to the shareholders, and "of the mode of dealing with such proportion, and of "all other matters relating to the capital stock of the "Company."

In my opinion the effect of these enactments is that it is obligatory upon the Directors in declaring the dividends out of the profits of the Company to allow to the policyholders on the participation scale not less than ninety per cent. of the profits, leaving not more than ten per cent. for the shareholders. The 13th section of the Act of 1899 gives the control to the shareholders and the Directors elected by them of the question of the proportion of profits not exceeding ten per cent. thereof to be allotted to the shareholders, and it is obvious that this enactment retained the limitation to ten per cent. of the profits in respect of the amount to be allotted to the shareholders.

It follows that the discretion which under the Act of 1849 had been vested in the Directors as to the proportion to be given to assurers upon the participation scale of the profits realized from that branch has been superseded by the subsequent enactments, and the Directors may since the Act of 1879 divide all the profits in their discretion; but always subject to the proviso that the persons assured on the participation scale shall have not less than ninety per cent. thereof on any such division.

There is nothing in the Company's Acts authorizing the Directors to make any payment to the shareholders in respect of interest upon the capital subscribed by them in addition to their ten per cent. share of the profits. Such a payment seems to me to be unauthorized, as in my opinion all that the shareholders are entitled to is such share in the profits, not exceeding ten per cent. of the whole, as the Directors think fit to allot to them.

I am therefore of opinion as follows:

1. The policyholders on the participation scale have been since 1879 and are now on any division of profits entitled to at least ninety per cent. of all the profits realized by the entire business of the Company.
2. The payments of dividends to the shareholders since 1879 in excess of ten per cent. of the profits from the business of the Company have been **ultra vires** payments.
3. **There is no ground for the contention that the shareholders are entitled to interest on capital and also to ten per cent. of the profits, or to a sufficient part thereof to make up $80,000 a year to be paid to them as dividends; but it is the duty of the Directors to make up the accounts of all the profits realized from the entire business of the Company including the interest which may arise from the investment of the money paid in on account of the capital stock of the Company, and to limit the dividends to shareholders to ten per cent. thereof.**

(Sgd.) R. B. FINLAY.

Temple, 27th March, 1908.

Sir Robert B. Findlay was Counsel for the Toronto Railway Company on the appeal to the Privy Council in the action between the Company and the City of Toronto which involved the construction of the Street Railway Agreement.

He was also Counsel for the Dominion Steel Company on the recent appeal by the Dominion Coal Company to the Privy Council in the case which involved the construction of the agreement between the Companies for the supply of coal; and he is recognized as one of the ablest and most distinguished of counsel at the English bar.

The opinion is so clear and conclusive that any policyholder may understand it.

The duplicate of this opinion was given to the President of The Canada Life Assurance Company for perusal, and it is alleged that notice was given to him that the Board of Directors must comply with the principles of law laid down in this opinion and must distribute the profits from the entire business of the Company between the shareholders and the policyholders in the proportions of ten per cent. to the shareholders and ninety per cent. to policyholders.

It is alleged that the President intimated after perusal of the opinion that the Board of Directors might restore the money which had been taken from the policyholders under the name of strengthening the reserves—amounting to from $2,500,000 to $3,000,000, and which is alleged to have been wrongfully taken—and it is also alleged that the President promised that the question of the future distribution of the profits would be taken into consideration.

The manner of carrying out this promise appears by the following notice:

> "Notice is hereby given that application will be
> "made to the Parliament of the Dominion of
> "Canada at the next session thereof for an Act to
> "amend the Acts relating to The Canada Life
> "Assurance Company by changing the date of
> "the annual meeting and making necessary
> "changes as to notices of meetings consequent

"thereon and providing for any further changes in "the date of such meeting, **defining the provisions "as to division of profits,** extending the powers of "the Company as to holding real estate in Ontario, "and for other purposes. Dated at Toronto, this "4th January, A.D. 1909. Alexander Bruce, "Solicitor for the Company, Canada Life Building, "Toronto, Ont."

It is therefore advisable to refer to the report of the Royal Commission, at pages 7 to 17, and to give further information.

The Report is full of significant comments; amongst others, the following:

"The absolute control, real or potential, residing "in the President and General Manager, and in which "his stockholding and offices secured him, have to a "marked extent influenced the investments of the "Company which have been made to serve not only the "interests of The Canada Life Assurance Company but "also his own interests and the interests of other "institutions in which he was largely concerned. He "says he has always made the interests of The Canada "Life Assurance Company his first and chief concern, "but many of the investments made by or on behalf of "that Company have been made to serve other interests "as well. The dual position and conflicting interests "of Mr. Cox in many of these transactions have been "most clearly defined. The Central Canada Loan & "Savings Company, in which there is a large indepen- "dent shareholding, is under Mr. Cox's control to such "an extent that, to use his own language, we are to "treat it as being himself.

"This Company has been very largely interested "in the promotion of enterprises of a more or less "speculative nature, the success of which largely "depends upon facilities for carrying and marketing "stocks and bonds of those enterprises.

"Mr. Cox has from time to time, as he frankly "stated, brought about investments in securities of this "description, of the funds of The Canada Life Assurance "Company, in aid of transactions in these securities "on his own part, and on the part of other institutions "which he controls.

"He has not hesitated from time to time, as "occasion seemed to arise, to lend the money of The "Canada Life to others to assist them in carrying "similar securities. Upon one occasion, referred to "hereafter, when he was himself, both directly and "in respect of some of his business associates, and "some one or more of the institutions in which he had "a controlling interest, largely concerned in maintain-"ing the market price of a security of this description, "he made use of the funds of the Company to purchase "the security for the express purpose of strengthening "or upholding its market price."

The Report goes on to refer to loans of Canada Life money to employees of the Company to carry stock on margin, and contains a list of bonds and stock amounting to $6,933,000, in these significant terms :

"The transactions by way of purchase with the "Central Canada Loan and Savings Company (the "other self of Mr. Cox) and with the Dominion "Securities Corporation—the creature of the Central "Canada Loan and Savings Company—were numerous "and profitable to those institutions. These trans-"actions indicate to your Commissioners that the funds "of the Company were employed with the utmost "freedom in transactions with institutions in which "Mr. Cox was largely interested. In many of these "transactions the conflict of Mr. Cox's interest with his "duty is so apparent that the care of the insurance "funds could not always have been the sole con-"sideration."

A reference is then made to an extraordinary transaction involving the sum of $389,500, and the Commissioners proceed to say:

"Although it is represented that this transaction "did not result from a desire to conceal this loan from "the insurance department, it was certainly calculated "to have that effect, and it is impossible to give cre-"dence to the theory that there was any real paying off "of the loan in view of the circumstances."

The strengthening of the reserves and the departure from the Parliamentary standard for computation are commented on and the result of these changes are stated in the following words:

"The result of these alterations in the basis of "reserve was to absorb

"In 1894, approximately	- -	$ 500,000
"In 1899, approximately	- - -	1,070,000
"In 1901, approximately	- -	995,000

"which would otherwise have been available for dis-"tribution of profits."

The construction of the Act of 1879 and of the Legislative provision for the distribution of profits in the proportion of ten per cent. to shareholders and ninety per cent. to policyholders on the participating plan, was not within the sphere of the Commission, and the specific question—namely—whether the President was entitled to claim in the first place interest on the capital stock, and was also entitled in the second place to claim a percentage of the profits—was neither raised before nor considered by the Commission.

The question was incidentally referred to, and the claim of the President which is denied in the opinion of Sir Robert B. Finlay, is mentioned, and the Commissioners then proceed as follows:

"It is manifest that there is nothing to limit the "management for the future to 8 per cent. dividends. "Up to ten per cent. of total profits the statute permits

"shareholders to take, and the dividends are bounded "by this percentage only; **but it is equally manifest "that if the inherent earning power of the additional "capital is only 4.67 per cent. its engagement in the "concern of The Canada Life without any real need is "a simple method of raising that earning power to "eight per cent.—the difference, under whatever name, "being unnecessarily taken away from the policy-"holders whose accumulations have earned it."**

The allegation on behalf of the policyholders is that the intention of strengthening the reserves is interwoven with an intention to increase the capital from $125,000 to $1,000,000, and to pay an annual permanent dividend thereon for all time to come at the rate of eight per cent. per annum, and also to divide the remainder of the profits of the business of the Company in the proportion of ten per cent. to the shareholders and the other ninety per cent. to the policyholders, after making some allowance for average rate of interest.

The money and the credit of the policyholders who have taken out policies with profits, have been utilized to make an immediate cash gift to the shareholders of the sum of $600,000.

The sum in proportion is as follows:

The cash paid in on the capital stock is raised to - - - -	$1,000,000
An annual dividend thereon at the rate of eight per cent. amounts to -	80,000

The stock on the market on a basis of five per cent. dividend payable half-yearly is worth the sum of - - - - - - | $1,600,000

dividend payable half-yearly is worth the sum of - - - - - -	$1,600,000
proved by the dividend thereon at the rate of five per cent. amounting to the sum of - - - - -	80,000

The stock of The Canada Life is therefore marketable at once at the rate of $160.00 a share, and the shareholders would—if this Bill is sanctioned by the Parliament of Canada—make an immediate profit equal to cash in hand of - - - - $600,000

It will be satisfactory for the policyholders of The Canada Life to know that in these days of high finance, pictured by the Royal Commissioners in their report, the law gives an absolute and complete protection to the policyholders who have taken out their policies with profits. The opinion of Sir Robert B. Finlay is clear and conclusive, and the President has therefore hastened away to the Parliament of Canada for a Bill to change the law upon which policies of the Company have been canvassed for and issued to policyholders to the amount of millions on millions of dollars in Canada, in England, and in foreign jurisdictions.

The Bill might reasonably be entitled a Bill—

(1) To discredit the report of the Royal Commissioners on Life Insurance;

(2) To give a quasi Parliamentary approval to the operations of George A. Cox, which have been condemned by the Royal Commissioners.

(3) To ratify the conversion of millions of dollars of profits, which belong to the policyholders, and to enable the shareholders to make an immediate profit of $600,000 and future profits.

One other consideration to show the preposterous character of this proposal is that The Canada Life has entered into competition in England and in the United States with British and American life insurance companies. It has procured licenses both in England under British law, and in the United States under State law, and The Canada Life is to-day carrying on business and issuing policies in these jurisdictions.

The Parliament of Canada has no legislative power to change the contract rights upon policies which have been issued in England and in foreign jurisdictions. Their rights cannot be affected by Canadian Legislation, and the result would be that policyholders in foreign jurisdictions would be entitled to ninety per cent. of the profits of the Company, and if the law should be changed at the demand of the President, the shareholders would take their dividends and the British and American policyholders would be entitled to their dividends in the proportion of ninety per cent. of the profits, and there might be no profits left for the Canadian policyholder. They might even be in debt.

The bill of which the President gives notice will probably propose to the Parliament of Canada that this law of 1879, which defines in plain and clear language the proportion of dividends of all the profits between the policyholders with profits and the shareholders, shall be abrogated **and that a special law shall be passed to subvert and destroy the lawful rights of every policyholder who has paid the higher premium and taken out a policy with profits in The Canada Life Assurance Company.**

The contract between a life insurance company and an insurer for the benefit of widow and children has always been regarded as one of the most sacred of all contracts, and one of the most grievous features of this whole matter is that the policyholders have been thinking that the officers of The Canada Life Assurance Company were administering the affairs of the Company in accordance with the established principles of law and justice to every policyholder.

The perusal of the Report of the Royal Commissioners and the evidence of the advances from the agency at Peterborough to the absolute control of the money of the policyholders, and the use of the money for the promotion of doubtful enterprises, and the lend-

ing of money to employees to buy and sell stock on margin, may well cause amazement, surprise and regret to a very large body of policyholders.

It is to be hoped that there is not another life insurance company in Canada in which the President and General Manager of the Company in control will sanction the lending of trust money to employees to take their chances in the rise and fall of stocks. One name for this is "gambling" in stocks.

The Royal Commissioners were exercising powers and duties of a judicial character, and the President has challenged their Report. There is no official report of the proceedings of the Senate, and we therefore rely on the newspaper report.

The President speaking in the Senate :

"This statement is inaccurate, entirely misleading "and inconsistent with the actual facts of the case, "which are as follows : In the early history of the "Company the Act of Incorporation provided that the "profits derived from the business should be divided "in the proportion of twenty-five per cent. to the share-"holders and seventy-five per cent. to the policyholders. "It remained in that way until the year 1879, when "the shareholders made application for legislation pro-"viding that not more than ten per cent. of the profits "should be allotted to the shareholders, and not less "than ninety per cent. to the policyholders.

"The ten per cent. to which the shareholders are "still entitled is not increased, decreased, or in any "way affected by the amount of paid up capital, "whether it be $125,000.00 as it was, or $1,000.00 as "it now is. In either case the shareholders are en-"titled to one-tenth of the profits. A shareholders' "account has been kept to which has been credited not "only the average rate of interest earned for the year "on the capital, but also one-tenth of the profits dis-

"tributed, and it is out of this account that the dividend "of eight per cent. has been paid. How then can it "be said that anything has been taken away from the "policyholders?"

This challenge that the Royal Commissioners have made an "inaccurate, entirely misleading and inconsistent" report, involves the good faith of the Commissioners and more.

The alleged entries in the private books of the Company are of course irrelevant and of no importance in this controversy.

The real question is whether the Senator has been just and fair in making a charge against the Royal Commissioners from a privileged seat in the Senate of Canada and publishing and charging th the Report of the Commissioners to Parliament is **inaccurate, en-"tirely misleading and inconsistent with the actual "facts of the case."**

The point is that the President alleged in the Senate that "**ten per cent. of the profits payable to the "shareholders is not increased, decreased or in any way "affected by the increase of capital from $125,000 to "$1,000,000.**

The finding of the Commissioners is that—

"It is manifest that if the inherent earning power "of the additional capital is only 4.67 per cent. its "engagement in the concerns of The Canada Life with-"out any real need **is the simple method of raising that "earning power to eight per cent.—the difference, "under whatever name, being unnecessarily taken away "from the policyholders whose accumulations have "earned it."**

A very simple illustration proves the accuracy of the report of the Commissioners:

The average rate of interest is stated at 4.67 per cent. (although we may here mention that for the

purpose of computation against the policyholders this rate has been reduced to three and one-half per cent. and three per cent.)

Let us therefore take the original capital of - - - -	$125,000.00
Interest at 4.67% on $125,000.00 -	5,837.50
Let us now take the increased capital of - - - -	$1,000,000.00
Interest on $1,000,000.00 at 4.67%	46,700.00

It is stated by the President that this rate of 4.67 per cent. was at the time the actual earning power of the money, but the President has pledged the Company to pay a dividend at the rate of eight per cent. per annum to the shareholders, and this amounts to $80,000.00.

Now where is the difference of $33,300 between the dividends of $80,000 per annum and the inherent earning power of $1,000,000, of $46,700 per annum, to be taken from? It must be paid by some one.

It is plain and undeniable that it must be taken from the policyholders, and from the interest on the money of the policyholders, and there is no escape from the conclusion of the Royal Commissioners that the difference of $33,300, under whatever name, "**is being "unnecessarily taken away from the policyholders "whose accumulations have earned it.**" And, of course, this is exclusive of the claim of the President for an additional share of the profits.

It is singular to notice the lapse of memory even by a Senator, and we refer to page 988 of the report of the Royal Commissioners where the record shows the admission of the President as follows:

"I will ask you to bear in mind that the $1,000,000 "paid in by the shareholders earns at the average rate "of the Company's invested funds about $47,000,

"leaving only about $33,000 per year from the profits "of the Company to make up the eight per cent. which "they receive as dividends."

The simple truth appears to be that the Royal Commissioners have the sworn testimony of George A. Cox against George A. Cox in support of their conclusions, and that the pretence that the interest of the policyholders has not been affected by the increase of the capital from $125,000 to $1,000,000 is entirely indefensible.

I will now consider the claims in this matter.

(1) A declaration that the policyholders with profits have been since 1879 and are now entitled to at least 90 per cent. of all the profits from the entire business of the Company.

The application by the President to Parliament is equivalent to an admission that the opinion of Sir Robert B. Finlay is indisputable.

(2) Evidence to be given in open Court—and which must be easily accessible from the records of the Companies—of the unlawful use of the trust money of the policyholders by the President in the manner recited in the report of the Royal Commissioners.

(3) A motion to the Court for the removal of the President from the control and management of the trust money on the ground that he has not administered and invested the trust money of the policyholders in accordance with the established principles of law.

(4) A declaration that the change of the Parliamentary standard of the rate of interest for the computation of the reserves was unlawful.

(5) An order and direction for the computation of the reserves in accordance with the Parliamentary standard.

(6) An order to restore to the policyholders the money taken from them under the name of Strengthening the Reserves.

(7) An order to compel the restitution to the policyholders of all dividends which have been paid to the shareholders in excess of ten per cent. of the profits of the Company.

(8) An order to take all necessary accounts and make all necessary inquiries.

(9) An order for an account of and inquiry into all the private transactions of George A. Cox mentioned in the report of the Royal Commissioners, and all other similar transactions, and of the use, application and conversion of the trust money of the policyholders of The Canada Life in, towards and for the promotion and carrying forward of private enterprises, and to compel the restitution of all unlawful gains and profits and the enforcement of liability for all losses in all these transactions.

(10) And for all such further and other relief—inclusive of the payment of costs—as the policyholders may appear to be entitled to upon the examination of the affairs of the Company.

I have before me the record that the Mutual Life Insurance Company of New York has recovered from its former President and others nearly $6,000,000.

THE ALLEGED MISTAKE IN THE ACT OF 1879

It is evident that the founders of the Company intended to carry on the business on a paid up capital of $125,000, and the business was in fact carried on from the year 1865 to the year 1900 on that capital.

The Company was a safe and solvent Company under the Parliamentary standard of calculation for the reserve, and it is alleged that there was no good cause as against the policyholders to increase the capital from $125,000 to $1,000,000.

It is also alleged that the "strengthening of the reserves" by the reduction of the rate of interest below

the Parliamentary standard, and the "increase of capital" and putting it on a dividend paying basis of 8 per cent. per annum, were interwoven with each other for the profit of the shareholders and against the lawful rights and interests of the policyholders.

It is further alleged that the Act of 1879 was passed word for word as drawn by counsel and approved by the founders of the Company, and there was no mistake in that legislation. In fact it was so simple that a child might understand it.

10 per cent. of the profits would, of course, pay a high rate of interest on $125,000.

But 10 per cent. of the profits would only pay a low rate of interest on $1,000,000.

The contracts called "Life Policies" were all issued from 1879 to 1900, and paid for and received on the faith of the paid up capital of $125,000, and of this legislation to distribute the profits in the proportion of 10 per cent. to shareholders and 90 per cent. to policyholders.

An examination of the official records indicate that the dividends which have been paid from 1879 to 1900 on the capital of $125,000, were approximately equal to ten per cent. of all the profits realized from the entire business of the Company.

There was no mistake whatsoever in the legislation of 1879, and even if there were a mistake it cannot be amended now as against the existing contract rights of the policyholders.

It is manifest that the mistake happened when the President thought he could call up other $875,000 of capital and put it on a dividend paying basis of eight per cent. per annum, and additional profits, and (1) make a large immediate cash profit on the transaction at the cost of the policyholders, and (2) mortgage the profits of the policyholders for all time to come to pay a perpetual dividend to the shareholders.

There is no escape from the conclusion of the Royal Commissioners that "**the increase of capital and "its engagement in the concerns of The Canada Life "without any real need is a simple method of raising "that earning power to eight per cent., the difference, "under whatever name, being unnecessarily taken "away from the policyholders whose accumulations "have earned it.**"

The policies issued in England and in the States of the United States cannot be affected by Canadian legislation, and the passing of this Act would create classes amongst classes of policyholders.

The case is simple. The President thought he was investing his money at eight per cent. per annum at the cost of the policyholders. He has in law and in fact invested it at ten per cent. of the profits of the Company, which I estimate will be approximately equal to two and a half per cent. or three per cent. per annum.

The difference between that percentage and eight per cent. per annum, besides additional profits which he calculated on, ought to be his own loss and not the loss of the policyholders. The capital cannot be paid back unless the shareholders would agree to mutualize the Company, but I have no doubt that a proposal of that kind would be welcomed by all the policyholders.

At present the shareholders are only entitled to ten per cent. of the profits, which I hope will yield three per cent. per annum to them—the same rate as they based their calculation upon against the policyholders.

There is neither legal nor equitable nor moral ground for Parliamentary interference in any such case. It would just be as reasonable for Parliament to pass an Act to relieve the Dominion Coal Company from the recent judgment of the Privy Council.

I am a policyholder with profits to the amount of $35,000.00, and I and the other policyholders with profits who will act with me claim the legal right to enforce our lawful contracts against The Canada Life Assurance Company and its officers in the tribunals of the country, and respectfully protest against any spoliative and ex post facto legislation to release the Company and its officers from their lawful obligations.

DATED at Toronto this 8th day of March, 1909.

WILLIAM LAIDLAW,

SOLICITOR.